

Eugene Kim  
453 S Spring St Ste 400  
Los Angeles, CA 90013  
e-mail: eugene@thejudgmentsolutions.com  
(213) 800-4989

Assignee of Record, In Pro Per

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re  
SPECTRUM LINK, INC.

Debtor(s)

Case No.: 2:21-bk-16403-VZ

Adv. No.: 2:23-ap-01173-VZ

Chapter 7

HOWARD M. EHRENBERG, Chapter 7  
Trustee,

Plaintiff,

vs.

**OPPOSITION TO DEFENDANT'S  
MOTION FOR ORDER TO SET ASIDE  
DEFAULT JUDGMENT**

**DECLARATION OF EUGENE KIM IN  
SUPPORT THEREOF**

**Date: October 24, 2024**

**Time: 11:00 a.m.**

**Place: Courtroom 1368**

MILLENNIUM MARKETING CONCEPTS,  
INC., UNITED CARE RESIDENTAIL, INC.,  
and ALEX MUKATHE,

Defendant(s).

**I. INTRODUCTION**

Assignee of Record and Judgment Creditor Eugene Kim ("Creditor") In Pro Per hereby submits the following Opposition to Defendant Alex Mukathe's Motion for Order to Set Aside the Default Judgment entered against him. Defendant's arguments regarding improper service, lack of personal jurisdiction, and excusable neglect are without merit and fail to meet the legal standards for relief..

1 **II. SUMMARY OF THE ARGUMENT**

2 Defendant Mukathe seeks to set aside the default judgment on the grounds that service  
3 was improper, that the judgment is void, and that excusable neglect warrants relief. Specifically,  
4 Defendant relies on FRCP 60(b)(1) and FRCP 60(b)(4), alleging improper service and lack of  
5 notice.

6 First, Defendant's Motion is untimely. The judgment was entered on February 22, 2024,  
7 and the Motion to Set Aside was not filed until September 20, 2024, a delay of over eight  
8 months, which is well beyond the reasonable time requirement under FRCP 60(b)(1).

9 Second, Defendant has failed to establish a meritorious defense or excusable neglect, as  
10 required by Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380,  
11 395 (1993). Defendant's allegations of intercepted mail are unsupported by evidence and fail to  
12 overcome the presumption of proper service.

13 Third, service was validly executed. The Summons and Complaint were served to  
14 Defendant's business address, as permitted under FRBP 7004(b)(1), creating a presumption of  
15 valid service that Defendant has not rebutted.

16 **III. FACTS**

17 On June 9, 2023, Plaintiff filed the Complaint in this adversary proceeding. The Summons and  
18 Complaint were served upon Defendant Alex Mukathe on June 15, 2023, by first-class mail to  
19 Defendant's business address at 8221 3rd Street, Suite 204, Downey, CA 90241. This address  
20 was listed as Defendant's business address for Spectrum Link, Inc.

21 Defendant failed to respond to the Complaint within the required time, and the Clerk  
22 entered a default against Defendant on November 15, 2023. A Default Judgment was  
23 subsequently entered on February 22, 2024. Defendant filed his Motion to Set Aside Default  
24 Judgment on September 20, 2024.

25 **IV. ARGUMENT**

26 **A. DEFENDANT'S MOTION IS UNTIMELY**

27 Federal Rule of Civil Procedure 60(b)(1) allows relief for mistake, inadvertence,  
28 surprise, or excusable neglect, but it must be sought within a "reasonable time" and no more than

1 one year after the entry of the judgment. Defendant waited more than eight months to file his  
2 Motion, which is an unreasonable delay under the circumstances, particularly given that he had  
3 notice through proper service.

4 **B. DEFENDANT FAILS TO ESTABLISH EXCUSABLE NEGLECT**

5 The Pioneer standard requires courts to evaluate several factors, including the length  
6 of the delay, the reason for the delay, whether the delay was within the reasonable control of the  
7 movant, and whether the movant acted in good faith.

8 **1. Length of Delay and Prejudice to Plaintiff:** Defendant's delay of over eight months, with no  
9 compelling explanation, is significant. Such a delay in responding to the judgment is prejudicial  
10 to Plaintiff, as it delays the enforcement of a valid and properly entered judgment.

11 **2. Reason for the Delay:** Defendant's reason for the delay is based on a claim that mail was  
12 intercepted by third parties. However, service was conducted to Defendant's business address—a  
13 place where he regularly conducted business. The Ninth Circuit has consistently held that neglect  
14 resulting from a failure to manage one's affairs does not constitute excusable neglect (*Briones v.*  
15 *Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997)).

16 **3. Good Faith:** Defendant argues that he acted in good faith after becoming aware of the  
17 judgment. However, Defendant's failure to act promptly, despite being properly served,  
18 undermines his assertion of good faith.

19 **C. SERVICE WAS PROPER**

20 Defendant alleges that service was improper because the Summons and Complaint  
21 were allegedly intercepted. However, Plaintiff served Defendant at his usual business address, in  
22 accordance with FRBP 7004(b)(1), which permits service by first-class mail to an individual's  
23 dwelling or usual place of business. The proof of service constitutes prima facie evidence of  
24 proper service (*SEC v. Internet Solutions for Business, Inc.*, 509 F.3d 1161, 1166 (9th Cir.  
25 2007)). Defendant has provided no "strong and convincing evidence" to rebut the presumption of  
26 valid service.

27 Defendant's contention that he should have been served at his residence rather than his business  
28 address is legally incorrect. The applicable rules expressly allow service at a business address,

1 and there is no requirement for personal service at a residential address when proper service has  
2 been achieved at a known business address.


3 **D. THE JUDGMENT IS NOT VOID UNDER FRCP RULE 60(b)(4)**

4 Defendant further argues that the judgment is void due to lack of personal jurisdiction.  
5 Personal jurisdiction is obtained when service is properly executed under applicable procedural  
6 rules. Here, service was conducted in full compliance with FRBP 7004(b)(1), and the Court  
7 properly obtained jurisdiction over Defendant. Defendant's argument under FRCP 60(b)(4) is  
8 without merit.

9 **V. CONCLUSION**

10 For the reasons set forth above, Assignee of Record respectfully requests that the Court  
11 deny Defendant's Motion to Set Aside Default Judgment. Defendant has not met the burden for  
12 establishing excusable neglect or any other basis for relief. The default judgment was properly  
13 entered, and the interests of finality and justice require that it remain undisturbed.  
14

15 Dated: October 3, 2024

16   
17 EUGENE KIM  
18 Assignee of Record, In Pro Per  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28